

In the Matter of License of )  
 )  
 FULTON CONTRACTING COMPANY )  
 )  
 Request for Reconsideration of )  
 Secondary Status for Station WNMG290 )  
 in locations in Illinois and Iowa )  
 )

**Released: January 5, 2000**

3. On August 13, 1997, Fulton requested primary status for Station WNMG290 as to any future licensees (except for Federal Government and maritime service operations) that may obtain authorizations in the 216-220 MHz band.<sup>2</sup> Station WNMG290 supports a radio-activated warning system that may be used by power utilities to alert persons in the vicinity of a nuclear power station of a potential safety hazard as well as utilization by public safety entities to warn the public of potential hazardous conditions.

<sup>2</sup> Letter from Terry J. Romine, Lucas, McGowan, Nace & Gutierrez for Fulton to Michael Regiec, Acting Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, dated August 13, 1997.

particularly weather-related alerts.<sup>3</sup> Fulton contends that its system provides a cost-effective means to ensure protection to the safety and health of the general public.<sup>4</sup> Fulton indicates that its system operation is low power and the duration of the transmissions is brief.<sup>5</sup> Finally, Fulton avers that it is concerned that its system may be jeopardized by future users which it argues it could not contemplate when it acquired its authorization.<sup>6</sup>

4. On January 20, 1999, the Branch denied Fulton's request for primary status for Station WNMG290. The Branch noted that the Land Mobile Branch granted Fulton an authorization on a secondary basis although the frequencies requested by Fulton in 1991 were not designated for the proposed operation. As noted above, this grant was pursuant to a waiver of Sections 90.203 and 90.259 of the Commission's Rules. On February 19, 1999, Fulton requested reconsideration of the Branch denial of Fulton's request for primary status for Station WNMG290.

5. We find that Fulton's request for primary status for Station WNMG290 filed on August 13, 1997 is in effect a petition for reconsideration of the Land Mobile Branch waiver and application grant that initially authorized Fulton to operate Station WNMG290 on a secondary basis.<sup>7</sup> Although not phrased as a petition for reconsideration, Fulton has requested a change in the condition placed on the initial authorization. We believe that such change is subject to section 405 of the Communications Act of 1934, as amended, and the Commission's Rules regarding the timely filing of petitions for reconsideration.<sup>8</sup>

6. Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration. Section 405 of the Communications Act, as amended, as implemented by section 1.106(f) of the Rules, requires a petition for reconsideration to be filed within thirty days from the release date of the Order.<sup>9</sup> Except where there are extraordinary circumstances involving the failure to provide proper notice,<sup>10</sup> the Commission has no

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *See* 47 C.F.R. § 1.106.

<sup>8</sup> *See* Sun Over Jupiter Broadcasting, Inc., et al., *Order*, 8 FCC Rcd. 8733 (1993).

<sup>9</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>10</sup> *See Gardner v. FCC*, 530 F.2d 1086, 1091 (1976); *Reuters Limited v. FCC*, 781 F.2d 946 (1986) (the court stated that unlike the unusual circumstances in *Gardner*, where the affected party was unrepresented by counsel and the Commission failed to provide the requisite notice, there were no extraordinary circumstances justifying the consideration of a belated petition for reconsideration).

jurisdiction to entertain a late-filed petition for reconsideration.<sup>11</sup> Under section 1.4(b) of the Rules, the first day of the thirty-day period begins on the day after the day on which public notice of that action is given.<sup>12</sup> For non-rulemaking documents released by the Commission, such as the Fulton waiver request, the term "public notice" means the release date of the order.<sup>13</sup>

7. The Land Mobile Branch grant was released on May 18, 1992. In this case, the first day of the thirty-day period was May 19, 1992 and the last day to file a petition for reconsideration was June 17, 1992. Because Fulton did not file its petition until over five years later on August 13, 1997, its petition was late and should have been dismissed as untimely filed. Further, we find that Fulton's request for primary status did not demonstrate a sufficient basis as to why the condition of secondary status should now be removed. In this regard, we are not persuaded by Fulton's contention that it did not predict the current 218-219 MHz Service licensees. It is clear that the express language of the waiver envisioned that any future 216-220 MHz band users would be primary to Fulton's operation of Station WNMG290. Under the circumstances presented here, we are not persuaded that the public interest would be furthered by a deviation from this approach. Accordingly, we dismiss Fulton's petition for reconsideration filed on February 19, 1999.

8. ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 90.143(c) of the Commission's Rules, 47 C.F.R. §§ 1.106, 90.143(c) (1992), the request for primary status filed on August 13, 1997 by Fulton Contracting Company IS DISMISSED.

9. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Sections 1.106 and 90.143(c) of the Commission's Rules, 47 C.F.R. §§ 1.106, 90.143(c) (1992), the petition for reconsideration filed by Fulton Contracting Company on February 19, 1999 also IS DISMISSED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>11</sup> Stephen E. Powell, File No. BPH-880714MJ, Memorandum, *Report and Order*, 11 FCC Rcd 11925 (1996) (citing *Reuters Ltd. v. FCC*, 781 F.2d 946 (D.C. Cir. 1986)) (denying petition filed 16 days late with no showing that delay was beyond petitioner's control); Walter Communications, *Order and Reconsideration*, 8 FCC Rcd 53 (1992) (distraction by "press of business" no excuse for failure to file petition for reconsideration within 30 days); Halcomm and KX Acquisition Limited Partnership, *Order*, 7 FCC Rcd 5089 (1992) (dismissed petition for reconsideration because it was filed three months late).

<sup>12</sup> 47 C.F.R. § 1.4(b).

<sup>13</sup> 47 C.F.R. § 1.4(b)(2).

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